



Prudential Standard LPS 600

Statutory Funds

Objective and key requirements of this Prudential Standard

This Prudential Standard sets out requirements for the operations of statutory funds and any restructure of statutory funds, so that they are fair and equitable for policy owners.

The ultimate responsibility for the operations of a life company's statutory funds and for following the required procedures in the event of restructuring a life company's statutory funds rests with the life company.

The key requirements of this Prudential Standard include:

- requirements for the operations of statutory funds, including the transfer of policies between statutory funds, use of a single bank account for statutory funds, non-participating benefits, starting amounts, the amount of permissible unsecured borrowings and the distribution of Shareholders' Retained Profits (Australian Participating); and
- requirements for the restructure of statutory funds including applications, notification of interested persons and documents required to be lodged with APRA.

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Authority

1. This Prudential Standard is made under paragraph 230A(1)(a) of the *Life Insurance Act 1995* (the Act).

Application of this Prudential Standard

2. This Prudential Standard applies to all **life companies** other than **friendly societies** registered under the Act.¹
3. This Prudential Standard applies to life companies from 1 January 2013.

Interpretation

4. Unless otherwise defined in this Prudential Standard, expressions in bold are defined in *Prudential Standard LPS 001 Definitions*.

Restructure of statutory funds

Application for restructure of statutory funds

5. Restructure of **statutory funds** is subject to the requirements set out in section 52 of the Act and in this Prudential Standard.
6. An application for a restructure of a statutory fund under section 52 of the Act must:
 - (a) be made using the 'Form 1' to this Prudential Standard; and
 - (b) be accompanied by the documents mentioned in 'Schedule 1' to Form 1 and be lodged with APRA at least 30 days before the proposed date of restructure.
7. The applicant must, on request by APRA and within the time specified, produce to APRA:
 - (a) a report by an independent actuary (being an actuary, other than the **Appointed Actuary**, who is approved by APRA in writing to perform duties as required by APRA and paid for by the life company for the purposes of this Prudential Standard) including statements on the same matters as those required of the Appointed Actuary; and/or
 - (b) documents that are provided to policy owners or prospective policy owners of the company that contain details of the terms and conditions of:
 - (i) policies of the kind that will remain referable to the transferring fund; and
 - (ii) policies of the kind that will become referable to the receiving fund.

¹ Refer to subsection 3(3) of the Act.

Approval of application for restructure of statutory funds

8. Subject to this Prudential Standard, APRA may approve an application by a life company for a restructure of its statutory funds.
9. APRA may refuse to approve an application by a life company for a restructure of its statutory fund or funds if it considers that immediately after the restructure:
 - (a) a transferring fund; or
 - (b) a receiving fund

will not satisfy the requirements of *Prudential Standard LPS 110 Capital Adequacy* (LPS 110) and *Prudential Standard LPS 112 Capital Adequacy: Measurement of Capital* (LPS 112).

Identification of policies

10. Before a restructure has effect, a life company must make a written determination identifying the policies referable to a transferring fund that are to be referable to a receiving fund.

Transfer of assets

11. A life company shall transfer assets from a transferring fund to a receiving fund as soon as practicable after the transfer of liabilities from the transferring fund to the receiving fund.
12. Assets that are transferred from a transferring fund to a receiving fund shall be treated as assets of a receiving fund on and from the date the restructure has effect.
13. The nature and value of assets to be transferred from a transferring fund to a receiving fund is to be determined by the life company, after receiving advice from the Appointed Actuary using a method that:
 - (a) places a value on the liabilities that is consistent with the value being adopted for the assets;
 - (b) considers the nature and value of the assets in aggregate and also in respect of each particular class of assets;
 - (c) in view of the nature of the liabilities to be transferred to a receiving fund and those to remain in a transferring fund, has the objectives of:
 - (i) facilitating the proper operation of the transferring fund and the receiving fund; and
 - (ii) protecting the interests of the owners of the policies referable to the transferring fund and the receiving fund; and

- (d) is consistent with the method that was described in the Appointed Actuary's report that:
 - (i) was lodged with APRA in relation to the application in accordance with Schedule 1 of Form 1; and
 - (ii) was approved by APRA as part of its approval under paragraph 8.

When restructure has effect

- 14. The restructure of statutory funds of a life company shall take effect from the date approved by APRA. On and from the time the restructure takes effect:
 - (a) policies that, immediately before the restructure, were referable to a transferring fund become referable to a receiving fund;
 - (b) policy liabilities and other liabilities that, immediately before the restructure, were referable to a transferring fund become referable to a receiving fund; and
 - (c) assets that, immediately before the restructure, were assets of a transferring fund become assets of a receiving fund.

Notification of interested persons

- 15. A life company that restructures a statutory fund must, within six weeks of the restructure having effect, give written notice of the restructure of the fund to the owner of every policy referable to any of the funds involved in the restructure.
- 16. A notice under paragraph 15 must set out the following matters:
 - (a) the name and identifying details of the funds involved in the restructure;
 - (b) the date of the restructure;
 - (c) the identifying details of each policy owner's policy that is referable to either the transferring fund or the receiving fund; and
 - (d) where the benefits under the policy are to be provided out of more than one statutory fund:
 - (i) the benefits under the policy that are to be provided out of each fund; and
 - (ii) either the proportion of the premium that is related to the benefits to be provided out of each fund and is to be credited to the fund, or the way in which that proportion is to be calculated.
- 17. A notice under paragraph 15 must be accompanied by:
 - (a) a document describing (in summary form) the reasons for the restructure and containing relevant extracts from any report by the Appointed

Actuary on the proposed restructure under item 2 of Schedule 1 to Form 1 which deal with implications for policy owners; and

- (b) a revision to the policy document by way of endorsement or written notice setting out matters in subparagraphs 16(a) and 16(b).

Information to be lodged with APRA following the restructure

18. If a restructure of statutory funds involves the establishment of a new statutory fund (the 'receiving fund'), the life company must give to APRA, within six weeks after the establishment of the receiving fund, a written notice setting out the following:
 - (a) the nature and terms of the establishment of the receiving fund;
 - (b) the nature and value of assets transferred from a transferring fund to the receiving fund; and
 - (c) the kinds of policies that are referable to the receiving fund.
19. The notice referred to in paragraph 18 must be accompanied by statements that the receiving fund has been established in accordance with section 52 of the Act, certified by:
 - (a) the principal executive officer;
 - (b) the Appointed Actuary; and
 - (c) the Auditor.

Operational requirements

Consequences of transfer by way of endorsement of policy between statutory funds

20. For the purposes of subsection 55(2) of the Act, where a policy is to be made referable to a statutory fund of a life company (the new fund) other than the statutory fund to which it is currently referable (the old fund), the life company must transfer assets from the old fund to the new fund of a value equivalent to the liabilities being transferred to the new fund from the old fund and must be satisfied after receiving advice from the Appointed Actuary, that the transfer of liabilities will not result in unfairness to either the owners of the policies that are to be transferred to the new fund or the owners of policies that will remain referable to the old fund (particularly having regard to the nature of the assets to be transferred).
21. A notice mentioned in subsection 55(3) of the Act must:
 - (a) be in writing;

- (b) set out:
 - (i) the identifying details of the policy;
 - (ii) the identity of all the statutory funds to which the policy is or has become referable;
 - (iii) the identity of all the statutory funds to which the policy has ceased to be referable;
 - (iv) the date on which the policy became referable to the fund or funds to which it has become referable;
 - (v) where the policy is referable to two or more statutory funds:
 - (A) the benefits under the policy that are to be provided out of each fund; and
 - (B) either:
 - I. the proportion of the premium that is related to the benefits to be provided out of each fund and is to be credited to the fund; or
 - II. the way in which that proportion is to be calculated; and
- (c) be given to the policy owner within six weeks after the occurrence of whichever of the circumstances described in paragraphs 55(3)(a) and 55(3)(b) of the Act is applicable.

Single bank account for two or more statutory funds

22. For the purposes of subsection 34(4) of the Act, the bank account must be maintained in accordance with the following standards:
- (a) A statutory fund account must be established in the records of the life company in respect of each statutory fund in respect of which the bank account is maintained.
 - (b) The statutory fund account must be a current account (or ledger) that records, as accounting entries, drawings from and receipts by the bank account in respect of the statutory fund.
 - (c) The drawings and receipts must be balanced by offsetting entries in both the bank account and the statutory fund account.
 - (d) The balancing must be carried out not less frequently than once every seven days, except that:
 - (i) in the case of drawings or receipts relating to investment-linked contracts, the balancing must be carried out not less frequently than the frequency at which the unit prices relevant to the contract concerned are quoted by the person managing the unitised

investment concerned, and in any event not less frequently than once every seven days; and

- (ii) in the case of drawings or receipts of amounts that are less than or equal to the greater of:
 - (A) \$500,000; or
 - (B) 1 per cent of the value of the assets of the statutory fund as last reported to APRA in reporting standards made under the *Financial Sector (Collection of Data) Act 2001* (FSCODA); the balancing may be carried out not less frequently than once every 28 days.
- (e) A debit balance in the statutory fund account must be recorded as a 'sundry debtor', and a credit balance as a 'sundry creditor'.
- (f) Interest must accrue daily on any balance (whether credit or debit) in the statutory fund account, at a rate that the company believes, on reasonable grounds, is fair and reasonable to the policyholders whose policies are referable to the statutory fund having regard to the interest earned by the bank account.
- (g) The net position of all the statutory fund accounts in aggregate must be reconciled not less frequently than once every 28 days. When so reconciled the net position must be equal to the balance of the bank account at that time.
- (h) If, at any time, the balance (whether credit or debit) in a statutory fund account comes to exceed the greater of:
 - (i) \$500,000; or
 - (ii) 1 per cent of the value of the assets of the statutory fund as last reported to APRA

the company must, in writing, within 28 days after that time, tell APRA and give APRA particulars of the transactions that caused the balance to exceed the applicable amount.

Non-participating benefits

23. For the purposes of subsection 15(3) of the Act, the following benefits, as specified in paragraphs 24 to 29, are non-participating benefits.

Policies insuring multiple lives with limited form of profit sharing

24. A benefit in respect of which all the following conditions are satisfied:
- (a) the benefit is provided for by a policy that does not have any investment component;

- (b) a group of two or more people are insured by the policy against the same contingencies;
- (c) the benefit has the features mentioned in paragraph 15(2)(b) of the Act;
- (d) the benefit includes an entitlement to share in a distribution by the life company of profits or surplus, but only by way of repayment of premiums previously paid or reduction of future premiums; and
- (e) the amount of the entitlement is determined by reference to the history of claims made under one or both of the following:
 - (i) the policy; and/or
 - (ii) policies of the same kind as the policy.

Investment-linked contracts

25. A benefit in respect of which all the following conditions are satisfied:
- (a) the benefit is an investment-linked benefit;
 - (b) the benefit has the features mentioned in paragraph 15(2)(a) of the Act;
 - (c) the amount of the benefit is to be calculated according to a formula that:
 - (i) is set out in the policy document; and
 - (ii) includes an element that is dependent on, or to be ascertained according to, a decision of the life company;
 - (d) if the charges payable under the policy are dependent on, or to be ascertained according to, a decision of the company, those charges as determined by or ascertained according to the decision of the company:
 - (i) are specified as a dollar amount, a percentage, or a combination of a dollar amount and a percentage;
 - (ii) to the extent that the charges are specified as a dollar amount - do not exceed the charges, specified as a dollar amount, that applied when the policy was issued, increased in accordance with a formula or index relating to price variations that the company believes, on reasonable grounds, operates fairly and reasonably in the circumstances (for example, a consumer price index published by the Australian Bureau of Statistics); and
 - (iii) to the extent that the charges are specified as a percentage - do not exceed twice the specified percentage that applied when the policy was issued; and
 - (e) the circumstances in which and the conditions subject to which the company may make a decision mentioned in subparagraph 25(c)(ii) are set out in the policy document.

Investment account contracts

26. A benefit in respect of which all the following conditions are satisfied:
- (a) the benefit is an **investment account benefit**;
 - (b) the benefit has the features mentioned in paragraph 15(2)(a) of the Act;
 - (c) the amount of the benefit is to be calculated according to a formula that:
 - (i) is set out in the policy document; and
 - (ii) includes an element that is dependent on, or to be ascertained according to, a decision of the life company;
 - (d) if the interest payable on the account is dependent on, or to be ascertained according to, a decision of the company:
 - (i) the benefit is provided for by a policy that belongs to a particular subcategory of life insurance business;
 - (ii) no other kind of policy is contained within that subcategory;
 - (iii) the net investment earnings (including realised and unrealised gains) of the assets administered for the purposes of that subcategory are credited to the policies belonging to that subcategory;
 - (iv) the aggregate value of the accounts under the policies belonging to that subcategory does not, and will not at any time, exceed 103 per cent of the value of the assets administered for the purposes of that subcategory; and
 - (v) the aggregate value of those accounts does not, and will not at any time, fall below 95 per cent of the value of the assets administered for the purposes of that subcategory;
 - (e) if the charges payable under the policy are dependent on, or to be ascertained according to, a decision of the company, those charges as determined by or ascertained according to the decision of the company:
 - (i) are specified as a dollar amount, a percentage, or a combination of a dollar amount and a percentage;
 - (ii) to the extent that the charges are specified as a dollar amount – do not exceed the charges, specified as a dollar amount, that applied when the policy was issued, increased in accordance with a formula or index relating to price variations that the company believes, on reasonable grounds, operates fairly and reasonably in the circumstances (for example, a consumer price index published by the Australian Bureau of Statistics); and

- (iii) to the extent that the charges are specified as a percentage - do not exceed twice the specified percentage that applied when the policy was issued;
- (f) the only elements of the formula mentioned in subparagraph 26(c) that are dependent on, or to be ascertained according to, a decision of the company are one or more of the following:
 - (i) the interest payable on the account;
 - (ii) the charges payable under the policy; and/or
 - (iii) the surrender value of the policy; and
- (g) the circumstances in which and the conditions subject to which the company may make a decision mentioned in subparagraph 26(c)(ii) are set out in the policy document.

Policies other than investment-linked or investment account contracts

27. A benefit in respect of which all the following conditions are satisfied:
- (a) the benefit is not an investment-linked benefit or an investment account benefit;
 - (b) the benefit has the features mentioned in paragraph 15(2)(a) of the Act;
 - (c) the amount of the benefit is to be calculated according to a formula that:
 - (i) is set out in the policy document; and
 - (ii) includes an element that is dependent on, or to be ascertained according to, a decision of the life company;
 - (d) if the charges payable under the policy are dependent on, or to be ascertained according to, a decision of the company, those charges as determined by or ascertained according to the decision of the company:
 - (i) are specified as a dollar amount, a percentage, or a combination of a dollar amount and a percentage;
 - (ii) to the extent that the charges are specified as a dollar amount - do not exceed the charges, specified as a dollar amount, that applied when the policy was issued, increased in accordance with a formula or index relating to price variations that the company believes, on reasonable grounds, operates fairly and reasonably in the circumstances (for example, a consumer price index published by the Australian Bureau of Statistics); and
 - (iii) to the extent that the charges are specified as a percentage - do not exceed twice the specified percentage that applied when the policy was issued;

- (e) the only elements of the formula mentioned in subparagraph 27(c) that are dependent on, or to be ascertained according to, a decision of the company are one or both of the following:
 - (i) the charges payable under the policy; and/or
 - (ii) the surrender value of the policy; and
- (f) the circumstances in which and the conditions subject to which the company may make a decision mentioned in subparagraph 27(c)(ii) are set out in the policy document.

Policies providing rolling fixed rates for fixed terms

28. A benefit in respect of which all the following conditions are satisfied:
- (a) the benefit has the features mentioned in paragraph 15(2)(a) of the Act;
 - (b) the policy:
 - (i) provides for a benefit in respect of each of two or more consecutive specified periods occurring during the term of the policy;
 - (ii) provides that the benefit in respect of each of the specified periods is to be determined at or before the commencement of the period;
 - (iii) gives the policyholder the option, at or before the end of each of the specified periods that end before the expiry of the term of the policy, to surrender the policy; and
 - (iv) does not provide for any benefits other than those mentioned in subparagraph 28(b)(i);
 - (c) if the benefit in respect of each of the specified periods were the only benefit provided for by the policy, that benefit would be a non-participating benefit by virtue of:
 - (i) subsection 15(2) of the Act; or
 - (ii) this Prudential Standard; and
 - (d) the circumstances in which and the conditions subject to which the company may make a determination mentioned in subparagraph 28(b)(ii) are set out in the policy document.

Transitional

29. A benefit in respect of which all the following conditions are satisfied:
- (a) the benefit is provided for by a policy issued by the life company before 1 January 1996;

- (b) the policy is a kind of policy which the company had available for issue on 30 June 1995 (in circumstances where all pre-conditions under the *Life Insurance Act 1945* to the issuing of that kind of policy were satisfied); and
- (c) if the policy had been issued at the end of 30 June 1995, it would not have been a participating policy within the meaning of the *Life Insurance Act 1945* (as then in force).²

Starting Amount

30. For the purposes of subsection 61(1) of the Act, the starting amount for each of the following amounts in respect of a statutory fund of a life company is the amount the life company used as the starting amount for the purposes of preparing statutory returns submitted to APRA for the financial year of the company ending in the year ending 31 December 2011 under the FSCODA, or zero if the company was not registered under the Act at that date, unless APRA determines otherwise in writing:
- (a) Australian policy owners' retained profits;
 - (b) overseas policy owners' retained profits;
 - (c) shareholders' capital;
 - (d) **shareholders' retained profits (Australian participating);** and
 - (e) **shareholders' retained profits (overseas and non-participating).**

Distribution of Shareholders' Retained Profits (Australian Participating)

31. For the purposes of subsection 62(5) of the Act, the distribution of shareholders' retained profits (Australian participating) from a statutory fund is prohibited if:
- (a) there is not, at the same time, a distribution of Australian policy owners' retained profits from the statutory fund; and
 - (b) immediately after the distribution, the shareholders' retained profits (Australian participating) of the statutory fund that remain undistributed are less than 25 per cent (or such lower percentage as is specified in the life company's constitution) of the Australian policy owners' retained profits of the statutory fund that remain undistributed.

Unsecured borrowings of a statutory fund

32. For the purposes of subsection 38(4) of the Act, a life company must not borrow money by means of unsecured borrowing, for the purposes of the business of a statutory fund, if the result would be that the total amount of principal outstanding under all unsecured borrowing relating to the fund would exceed 50

² To avoid doubt, in this standard 'charges' includes fees.

per cent of the free assets of the fund.

In relation to a statutory fund, 'free assets' means the excess of the **capital base** over the **Prudential Capital Requirement** for the fund as defined in LPS 110 and LPS 112.

Adjustments and exclusions

33. APRA may, by notice in writing to a life company, adjust or exclude a specific requirement in this Prudential Standard in relation to that life company.

Determinations made under previous prudential standards

34. An exercise of APRA's discretion (such as an approval, waiver or direction) under a previous version of this Prudential Standard continues to have effect as though exercised pursuant to a corresponding power (if any) exercisable by APRA under this Prudential Standard.

Form 1: Restructure of Statutory Funds

1. Name and Australian Business Number of life company

2. Date from which the restructure is proposed to have effect

3. Required documentation

By indicating 'Yes' below, the signatory to this form confirms that the documents mentioned in Schedule 1 to this form have been attached.

Yes

No

4. Contact person

Please provide the contact details for the person to whom enquiries relating to this application should be directed.

Name

Position title

Phone

Email address

5. Address for correspondence

Please provide the address to which correspondence relating to this application should be mailed.

6. Signatures

This form must be signed by:

- (a) the principal executive officer of the life company; or
- (b) an officer of the life company who has been authorised for that purpose by the principal executive officer, if the principal executive officer has notified APRA in writing of the authorisation.

Name

Position title

Signature

Date

Please send completed form and accompanying documents to your responsible supervisor.

Schedule 1 to Form 1

Specified documents required to be lodged with Form 1

1. A statement of the nature of the receiving fund and the terms and conditions on which the restructure is to take place. The statement must include the following information:
 - (a) the identity of a transferring fund and a receiving fund;
 - (b) the classes of life insurance business to be carried on by the company within the receiving fund;
 - (c) the categories of life insurance business to be carried on by the company within each of those classes;
 - (d) the sub-categories of life insurance business to be carried on by the company within each of those categories;
 - (e) the kinds of policies within those categories and sub-categories and, where the policies are referable to more than one fund, the benefits to be written by the company within those categories and sub-categories;
 - (f) the value of the policy liabilities to be transferred to the receiving fund, by kinds of policies;
 - (g) the value of the policy liabilities to remain in the transferring fund, by kinds of policies;
 - (h) the value of other liabilities (not being policy liabilities) to be transferred to the receiving fund;
 - (i) the value of other liabilities (not being policy liabilities) to remain in the transferring fund;
 - (j) the value of the assets to be transferred to the receiving fund, by asset class;
 - (k) the value of the assets to remain in the transferring fund, by asset class;
 - (l) the value of the amounts determined for the purposes of allocation and distribution of profits and losses under Divisions 5 and 6 of Part 4 of the Act to be transferred to the receiving fund; and
 - (m) the value of the amounts determined for the purposes of allocation and distribution of profits and losses under Divisions 5 and 6 of Part 4 of the Act to remain in the transferring fund.

2. A report by the Appointed Actuary on the proposed restructure, including:
 - (a) statement setting out the basis on which the nature and value of the assets to be transferred is to be determined;
 - (b) statement as to whether the assets to be transferred are appropriate to the liabilities to be transferred;
 - (c) statement as to whether the restructure will result in unfairness to the owners of the policies referable to any of the funds involved in the restructure; and
 - (d) statement as to whether, immediately after the restructure, a transferring fund and receiving fund will satisfy the requirements of LPS 110 and LPS 112.